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# THE AMERICAN LAW REGISTER AND REVIEW

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THE POWER OF A CORPORATION TO PURCHASE AND HOLD STOCK OF ANOTHER CORPORATION. This old question arose for fresh consideration upon a somewhat extreme state of facts in the recent case of *First National Bank of Concord v. Hawkins*, (C. C. A. 1st C.) 79 Fed. 51. A national bank had purchased as an investment 100 shares of the capital stock of another bank, and for a number of years had held them and drawn dividends. In 1893 the latter bank was declared insolvent and went into the hands of a receiver, and an assessment of \$100 was ordered on each share of the stock under the National Banking Acts. The defendant bank declined to pay this assessment on the ground that it had no power, under the law of its creation, to acquire the stock of another national bank as an investment; but the Circuit Court of Appeals, in deciding the case, held that it was not necessary to consider this proposition. They took the view that as the bank had full power to loan on the stock as collateral, or to take it in compromise of a doubtful claim,

and in either case to have the stock transferred in its own name absolutely, therefore no illegality appeared on the face of the transaction, and there was nothing to inform either the bank whose stock it acquired, or existing or future creditors, or the controller of the currency, that the transaction was not within the scope of the undoubted powers of the defendant. And the court decided that, this being the case, the unquestioned trend of decisions in the United States Supreme Court was that the bank is estopped to deny its liability.

It would seem that the court is supported in its decision by *dicta* of the Supreme Court, although there are no cases decided squarely on the point. The court in deciding the case of *First National Bank v. National Exchange Bank*, 92 U. S. 112, while admitting the power of a national bank to compromise a doubtful debt by taking stock of another bank, used language that would seem to negative its power to take such stock for ordinary purposes, saying: "Dealing in stocks is not expressly prohibited, but such a prohibition is implied from the failure to grant the power." In *Germania National Bank v. Case*, 99 U. S. 628, the question again before the court was of the power of a national bank to make a loan with the stock of another bank pledged as collateral security, and the power was, of course, supported. In its opinion, however, the court seems to have gone beyond what was necessary for its decision of the case, saying: "There is nothing in the argument on behalf of the appellants that the bank was not authorized to make a loan with the stock of another bank pledged as collateral security. That is an ordinary mode of loaning, and there is nothing in the letter or spirit of the National Banking Acts that prohibits it. But, if there were, the lender could not set up its own violation of law to escape the responsibility resulting from the illegal action." It was upon this language that the court placed most reliance in deciding the present case.

There can be no doubt of the power of a corporation to take the stock of another corporation in settlement of an old debt: *First Nat. Bank v. National Exchange Bank*, (*supra*). But whether it can hold such stock as security for a current loan, or whether it may subscribe for, purchase, or hold such stock for ordinary purposes is more in doubt. The better opinion in this country seems to be that it cannot: *Franklin Co. v. Inst. for Savings*, 68 Me. 63; *National Savings Bank v. Meriden Agency Co.*, 24 Conn. 159; *Nassau Bank v. Jones*, 95 N. Y. 115; *Knowles v. Sandercock*, 107 Cal. 629, 40 Pac. 1047; *Franklin Bank v. Commercial Bank*, 36 Ohio, 350; Clark on Corporations, 151 to 153; Thompson's Commentaries on the Law of Corporations, Vol. I., §§ 1102 to 1111. With reference to this prohibition it was said, in one of the above cases, "Were this not so, one corporation by buying up a majority of the shares of the stock of another could take the entire management of its business, however foreign such business might be, to that which the corporation purchasing such shares was created to carry on."

But, while this is the view apparently supported by the weight of American authority, and certainly by the text-book writers, there is not wanting the best of authority on the other side: *In re Asiatic Banking Corporation*, L. R. 4 Ch. App. 352; *Calumet Paper Co. v. Stotts Inv. Co.*, (Ia.), 64 N. W. 782. And one California case has decided that a corporation may be created for the express purpose of dealing in stocks, in which case it may, of course, purchase and hold them: *Market St. Ry. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225.

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## BOOK REVIEWS.

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**HAND-BOOK OF THE LAW OF PARTNERSHIP.** By WILLIAM GEORGE. Hornbook Series. St. Paul, Minn.: West Publishing Co.

This work is one of the latest products of that inexhaustible mine of legal publications, the West Publishing Co. As a concise and probably accurate summary, in a series of legal propositions, of nearly five thousand cases, it has its value. It is not, however, a book for the jurist or the student, both of whom demand a more scientific and historical discussion of the cases.

As a contribution to the science of the law, this volume is not worth the paper it is printed on, but, as a guide-book to the leading cases on the subject, and a *vade mecum* for the cramming student, it will, no doubt, be useful to many.

*R. R. F.*

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**A TREATISE ON MECHANICS' LIENS.** By LOUIS BOISOT, Jr., A.B., LL. B., of the Chicago Bar. St. Paul, Minn.: West Publishing Company.

It seems almost a hopeless task to embody in a treatise a subject so entirely statutory as that of Mechanics' Liens. The law of different jurisdictions is so contradictory and so subject to change, that one can never be sure what it really is. A considerable part of the Pennsylvania law, for example, as given by Mr. Boisot, is ancient history already.

The nature of the subject also puts unfortunate limitations on the author's style. The expressions, "where the statute provides," "under a statute requiring," etc., etc., are used to a wearisome extent, occurring as often as half a dozen times to the page. On page 408, § 418, it is said, "Where the statute expressly requires the claim to set forth the times when the material was furnished, or the labor performed, an omission of such allegations renders the lien void. . . . But, where the statute does not expressly require the claim to give the dates of the account, such dates need not be